

DOCUMENT RESUME

02702 - [A1812864]

[Protest of Temporarily Suspended Contractor against Proposed Contract Awards]. B-189103; B-189104; B-189105; B-189106; B-189112. June 22, 1977. 2 pp.

Decision re: John Bernard Industries, Inc.; by Paul G. Dembling, General Counsel.

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: Procurement Law I.
Budget Function: National Defense: Department of Defense -
Procurement & Contracts (058).
Organization Concerned: Department of the Air Force.
Authority: A.S.P.R. 1-605.1(i) (A). A.S.P.R. 1-605.1(i) (C). 4
C.F.R. 20.1(a). B-186421 (1976). B-186520 (1976).

The protester objected to the proposed award of contracts under seven requests for proposals. Since the protester was suspended from contracting with the Department of Defense for a temporary period, it was not an interested party under GAO Bid Protest Procedures. The suspension rendered the protester ineligible for award because the award would have been made during the period of the suspension. The protest was dismissed. (Author/SC)

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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

M. Boyle
Proc I

B-189103
B-189104
B-189105
FILE: B-189106
B-189112
B-189119
B-189139
DATE: June 22, 1977

MATTER OF: John Bernard Industries, Inc.

DIGEST:

Protester, suspended under provisions of ASPR part 6 (1976 ed.), is not interested party under GAO Bid Protest Procedures since suspension renders protester ineligible for award because award would be made during period required to complete investigation and legal proceedings as may ensue.

John Bernard Industries, Inc., protests against the proposed award of contracts under seven requests for proposals issued by the Air Force. The protester contends that the solicitations discriminate against small business, are ambiguous, prohibit alternate proposals, and favor offerors who generate their own price lists.

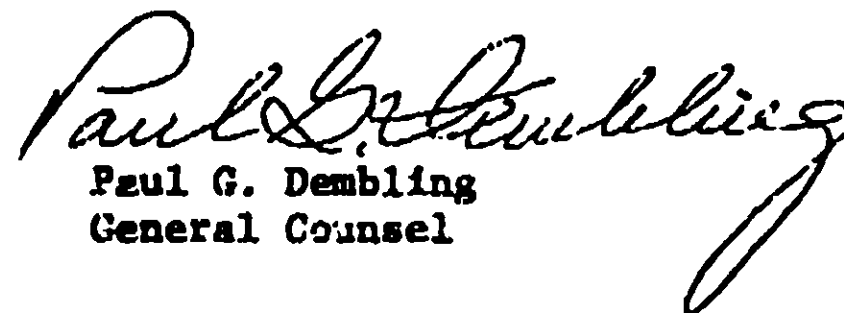
On April 1, 1977, pursuant to the provisions of Armed Services Procurement Regulation (ASPR) s 1-605.1(i)(A) and (C) (1976 ed.), the protester was suspended from contracting with the Department of Defense for a temporary period pending the completion of investigations and ensuing legal action. The protester argues that since no substantiating evidence has been presented and no hearing on the suspension has been held, the suspension was in violation of the fifth amendment of the Constitution. We note, however, that the Air Force's report contains a copy of a letter to the protester indicating the specific nature of the evidence and advising the protester of the right to request a hearing and be represented by counsel. The Air Force reports that a request for a hearing on the matter has not been received.

The Air Force, citing our decisions in Dynamic International, Inc., B-186421, September 9, 1976, 76-2 CPD 228, and Dynamic International, Inc., B-186520, September 10, 1976, 76-2 CPD 234, contends that the protests should not be considered because the protester is not an "interested party" under our Bid Protest Procedures, 4 C.F.R. s 20.1(a) (1977), since the possibility of award to the protester under the solicitations is precluded. In the Dynamic International, Inc., decisions, we held that a protester, who was placed on the debarred bidders list during the pendency of the protest, was not an interested party under our Bid Protest Procedures since any possibility of award was precluded.

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Here the protester was not debarred but suspended; however, under the ASPR a suspended firm may be ineligible for Department of Defense contracts during the suspension which may be for a period of 12 months. Therefore, a suspended firm would also not be an "interested party" under our Bid Protest Procedures because within the period reasonably foreseeable as the time in which award would have to be made, the suspended firm would be precluded from receiving an award. Thus, resolving the protest on the merits would be academic.

Protest dismissed.


Paul G. Dembling
General Counsel